

Roger Chamberline,
Francis Plympton, Gent. } Appellants. *John Newte, Clerk.* } Respondent.

The Respondents Case.

THE Respondent is Rector of the Portions of Pit and Tidcombe in the Church of Tiverton in the County of Devon.

That the Tyth of Mills is payable, and usually paid or compounded for, for the Mills within the said Portions.

That the Mayor and Burgeses of Tiverton, about six Years before, had Erected an Horse Malt-Mill within one of the said Portions, and by obliging the Publick-Houses to Grind thereat (they having the Power of Licencing Ale-Houses in the said Town) or otherwise gained great Custom to the said Mill, and the Custom of the other Mills very much decreased.

That the Corporation having let the said new Erected Mill to the Appellants, and they refusing to pay the Respondent any Tyth, or Compound for the same,

The Respondent Exhibited his Bill in the Exchequer, for the Tyth of the said new Erected Malt Mill.

To which the Appellants, by Answer, insisted no Tyth was Due or Payable for the same; and refused either to pay any Tyths, or make any Satisfaction or Composition with the Respondent for the same.

And that if any Tyth was due, yet it was only a Personal Tyth.

To which Answers the Respondent reply'd, and several Witnesses were Examined, and the Cause brought on to Hearing.

The Cause was Heard and Debated, and the Court took time to deliver their Opinions until the next Term after.

The Cause was finally Heard and Decreed, the whole Court upon solemn Argument being unanimously of Opinion, That Tyths were Due for this new Erected Mill; and that such Tyth was the Tenth Toll-dish; and decreed the Appellants to Accompt with the Respondent accordingly.

From this Decree, The Appellants have Appealed, and Insist upon these two Objections.

I. That no Tyth at all is Due or Payable for this Mill.

II. That if any Tyth be Due, it is only a Personal Tyth, and not the Tenth Toll-dish.

To which it is answered,

I. That Tyths are Due both by the Canon and Statute-Law, for new Erected Mills: Tyths are by the Canon due for all Mills, and by the Statute of *Articuli Cleri*, Chap. 5. for new Erected Mills; which expressly provides, That no Prohibition shall lye in such Case.

II. That there have from time to time, been several Resolutions and Decrees for Tyths of Mills.

III. That the rest of the Mills within the Respondents Portions, have all along paid, and still do pay Tyth, or a Composition for the same; And every *Modus* for a Mill, proves Tyths to be due, if they were not discharged by such *Modus*.

As to the Second Point.

I. It is a predial Tyth, and the Tenth Toll-dish payable for the same; and so is both the Canon, and Custom, and Usage in this Kingdom.

II. It is not a double Tyth; for it is paid by different Persons, and for different Purposes: *viz.* In the First Case by the Owner of the Corn, and in the Second Case by the Owner of the Mill.

Wherefore it is humbly Pray'd, that the said Decree may be Affirmed, and the Appeal Dismiss with Cost.

J. Cheshyre,
Sam. Dodd.

Bill Mich. 3^o.
 Anne Rne.

Cause Heard,
 20th Feb.
 1705.
 Finally Heard
 and Decreed,
 22 April,
 1706.